IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

FRIDAY, THE 18TH AUGUST 2006 / 27TH SRAVANA 1928

WP(C).No. 16300 of 2004(M)

PETITIONER:

M.C.SUSHAMA, USHAMANDIRAM, PONGA P.O.
THEKKEKARA (VIA) ALAPPUZHA.

BY ADV. SMT.V.P.SEEMANDINI
SMT.LEKSHMY RAMANATHAN

RESPONDENTS:
----

1. THE DISTRICT EDUCATIONAL OFFICER,
ALAPPUZHA.

2. THE MANAGER, SN.V.U.P.SCHOOL,
ALAPPUZHA.

***ADDL.R3 TO R5 ARE IMPLEADED**

3. VIDYA P., VAZHUTHAKKADU VEEDU,
AMAYIDA, AMBALAPUZHA, ALAPPUZHA DISTRICT.

4. MANJUMOL B., MODAMKUZHY, THOTTUVATHALA PO.,
KAINAKARI, ALAPPUZHA DISTRICT.

5. ASHITHA R. KURUP, SREE SHYLAM, KAKKAAZHAM,
ALAPPUZHA. 5.

*** ADDL.R3 TO R5 ARE IMPLEADED AS PER ORDER DT. 10.8.206 IN I.A.NO.11252/2006.**

BY ADV. DR.P.S.KRISHNA PILLAI - R2
SRI.H.VINOD
SRI.NELSON J.MANAYIL
BY GOVERNMENT PLEADER SRI.LONACHAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18/08/2006, ALONG WITH WP(C) 24772/2004, WP(C) NO.24771/2004 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.16300/2004

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE JUDGMENT DT.7.11.01 IN WA. NO.1183/01.

EXT.P2:- COPY OF THE ORDER D.T.22.10.02 ISSUED BY THE 1ST RESPONDENT APPROVING THE APPOINTMENT OF THE PETITIONER FROM 3.1.96 TO 6.3.96.

EXT.P3:- COPY OF THE REPRESENTATION DT.8.5.04 SUBMITTED BY THE PETITIONER BEFORE THE MANAGER, SNVTTI, KAKKAZHAM.

EXT.P4:- COPY OF THE REPRESENTATION DT.17.5.04 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

RESPONDENTS EXHIBITS

EXT.R2(a):- COPY OF THE ORDER D.T.1.9.92 IN CRP. NO.1261/92 OF THIS HONOURABLE COURT.

EXT.R2(b):- COPY OF THE JUDGMENT DT.31.1.01 IN OP. NO.5008/2000.

EXT.R2(c):- COPY OF THE JUDGMENT DT.21.1.03 IN CR.2204/01.

EXT.R2(d):- COPY OF THE COMMON ORDER DT.19.7.04 IN IA. IN OS. 35/87.

EXT.R2(e):- COPY OF THE ORDER DT.29.10.02 OF THIS HONOURABLE COURT IN CMP. NO.22544/02 IN OP. NO.13241/02.

/TRUE COPY/

tss

A.K. Basheer, J.

- -

W.P(C) Nos. 16300/2004-M,
24771/2004-Y
&
24772 of 2004-Y

- -

Dated this the 18th day of August, 2007.

JUDGMENT

These writ petitions are being disposed of by this common judgment since the issues involved in them are inter-related. Parties and documents as they appear in W.P.No.16300/04 shall hereinafter be referred to in the judgment.

2. S.N.V. Teachers' Training Institute, Kakkazham belongs to Thamarabhagam family. A suit for partition of the above school and its assets is pending in O.S.No.35/87 on the file of the Principal Subordinate Judge's Court, Alappuzha.

3. In CRP.No.1261/92 which had arisen from a proceeding in the above suit, this Court had issued a direction to the Manager to seek approval of the trial court before appointing teachers in the school during the pendency of the suit. It appears that Sri.Bhaskara Panicker, the then Manager had appointed the petitioner in W.P.No.16300/04 as an Upper Primary School Assistant without seeking permission from the court. Simultaneously he had also made 2 other appointments. Subsequently when Sri.Bhaskara Panicker requested the trial court for ratification of his action, his prayer was rejected and the applications filed by him in this regard were dismissed. Though the above order was challenged by Sri.Bhaskara Panicker before this Court in C.R.P.No.456/1999, that also met with the same fate. The services of the petitioner and the other two appointees were thereafter terminated with effect from February 8, 2000 by the successor Manager Sri.A.

Purushothama Panicker, respondent No.2.

4. Later respondent No.2 had appointed defendants Nos. 22 and 27 and another person in place of those 3 persons, after obtaining permission from the trial court. The above order passed by the trial court was challenged by the petitioner and the two oustees in CRP.2204/01. They had also filed OP.5008/2000 before this Court challenging their termination. The original petition was dismissed by a learned single Judge of this Court by judgment dated January 31, 2001, a copy of which is on record in Ext.R2(b). The Civil Revision Petition was dismissed by this Court by Ext.R2(c) judgment.

5. While dismissing O.P.5008/2000, this Court observed thus:

> ".....Here is a case where Bhaskara Panicker, who himself was appointed only by an officer of the Sub Court as Manager was specifically restrained from making any appointment of teachers "without prior permission of the Court'. It was flouting the said directive that Bhaskara Panicker gave appointments to the petitioners 1 to 3. The submission of the learned counsel for the petitioners that for the fault of the manager innocent people like the petitioners should not be penalised, certainly appeals to the heart, but it does not appeal to the head. The Court cannot recognise any act of any party which is in violation of law and naturally the appointments given by Bhaskara

> Panicker without prior permission can only be declared as invalid. This does not mean that the petitioners are without any remedy. Of course, Bhaskara Panicker is no more. The petitioners, who were made to work for the school, the benefit of which was availed of by Bhaskara Panicker, will certainly have a right to get the remuneration for their work. But that can be worked out only in a suit. The third respondent has already appointed the other teachers in the school with prior permission of the Court and they have to be paid for. The Government cannot be burdened with liability to pay two sets of teachers"

6. The above judgment was challenged in WA.1183/01. However in the appeal the petitioner-appellant pressed only her claim for salary for the period she had worked in the school. In other words, the declaration made by the learned single Judge that appointment of the petitioner by the then Manager Sri.Bhaskara Panicker without prior permission from the civil court was invalid, was not challenged by the petitioner before the Division Bench. Petitioner's request for issuance of a direction to the Government to disburse the salary to her was allowed, particularly in view of the fact that Sri.Bhaskara Panicker had passed away by that time. In short, the finding entered by the learned Single Judge that petitioner's appointment was invalid was upheld by the Division Bench.

7. The Civil Revision Petition filed by the petitioner and the two oustees was also dismissed by this Court as revealed from Ext.R2(c). It is however submitted by the learned counsel for the parties that SLP (C).No.12411/03 preferred against the above judgment is pending consideration before the Supreme Court.

8. In the meanwhile respondent No.2 had filed IA.NO.1069/04 before the Subordinate Judge's Court, seeking permission to appoint a UPSA and 2 LPSAs in the vacancies which were available in the school. While petitioners in W.P.NO.24771/04 had filed IA.No.1280/04 praying for a direction to the Manager to appoint them as UPSAs in the school in the available vacancies, petitioner in WP.No.16300/04 had also filed IA.No.1135/04 for a similar direction to the Manager to appoint her to the post of UPSA. These three applications were jointly considered by the civil court and by a common order they were disposed of allowing the application filed by the Manager thereby permitting him to make appointments as requested by him. While IA.No.1280/04 filed by the petitioners in WP.No.24771/04 was dismissed, IA.1135/04 was disposed of making it clear that appointment to be made by the Manager to the 3 vacant posts will be subject to the right of the petitioner in that Interlocutory Application (petitioner in W.P.NO.1630004.). Plaintiffs 5 and 2 in the Original Suit have preferred W.P.NO.24772/04 challenging the common order passed by the learned Subordinate Judge in the 3 I.As, while W.P.24771/04 is filed by the petitioners in IA.1280/00.

WP.Nos.24771 & 24772/2004:

9. Petitioners do not have a case that the 3 persons sought to be

appointed by the Manager were either unqualified or incompetent to hold the post. The claim of the petitioners in W.P.NO.24771/04 is only that their applications ought to have been considered by the Manager along with that of others. Learned Subordinate Judge had adverted to the above contention. As rightly noticed by the learned Judge, the candidate proposed to be appointed by the Manager as UPSA being a member of the family to which the school belongs, she had to be preferred. More importantly, the appointing authority had the right to choose the candidate from among the applicants. In the absence of any vitiating circumstance with regard to the choice made by the Manager, the court below did not find any reason to reject the proposal made by the Manager. I do not find any reason to take a different view. Therefore there is no merit in the contention raised by the petitioner in W.P.No.24771/04 and it is liable to be dismissed. I do so.

10. The petitioners in W.P.NO.24772/04 have raised a contention that the selection process by the Manager was not transparent and therefore the court below was not justified in allowing the Manager to make appointment as proposed by him. Petitioners have not pointed out any vitiating circumstance with regard to the proposal made by the Manager. They have also not succeeded in substantiating their contention that the selection process of the Manager was not transparent. Therefore I am not satisfied that interference is warranted with the impugned order at the instance of the petitioners in this writ petition also. Accordingly it is dismissed.

W.P.NO.16300/2004:

11. The prayer in this writ petition is to issue a writ of

mandamus or such other appropriate writ or direction to the Manager, respondent No.2, to appoint the petitioner as UPSA recognising her right as a Rule 51A claimant.

12. As noticed earlier, petitioner was appointed by the then Manager Sri.Bhaskara Panicker for a short spell from January 3, 1996 till March 6, 1996. It is also not in dispute that she was again appointed by Sri.Bhaskara Panicker in a regular vacancy of Teacher Educator in the school with effect from June 3, 1996. It appears that the above appointment was approved by the Department. In Ext.R2(b) judgment this Court had held that the appointment of the petitioner made by Sri.Bhaskara Panicker was invalid, inasmuch as the Manager had not obtained prior approval from the civil court before making the appointment. The said finding was not disturbed by the Division Bench in Ext.P1 judgment. Therefore petitioner cannot be heard to say that she would get the benefit of the provisions contained in Rule 51A of Chapter XIV-A KER. The preferential right under Rule 51A will be available to a teacher who had been appointed by a competent Manager in a regular vacancy, either short term or long term, in a proper and legal manner. This court having found that petitioner's appointment was invalid, she is not entitled to get the protection or benefit of Rule 51A. On that short ground the claim made by the petitioner is liable to be repelled . I do so.

13. The impleading petitions filed by subsequent appointees need not be dealt with or considered at this stage, in view of the order passed by me in the preceding paragraph. In the application filed by defendants 34 and 15 in the suit pending before the Subordinate

Judge's Court, Alappuzha for impleadment, it is contended that the refusal of the present Manager to prosecute the two Original Petitions viz., O.P.No.13421/02 and 31633/02 filed by the then Manager Sri.Purushothaman Panicker is totally malafide and against the interest of the Tharwad. I do not deem it necessary to deal with the above contention in view of the order that I have already passed in these cases.

For the foregoing reasons the writ petitions are dismissed. No costs.

A.K. Basheer

Judge.

an.